

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Douglas W. and Susan E. Hatcher,

Debtors.

Case No. 04-66902
Chapter 13
Hon. Marci B. McIvor

**OPINION GRANTING IN PART AND DENYING IN PART DEBTORS' COUNSEL'S
FIRST APPLICATION FOR COMPENSATION FOR SERVICES RENDERED PRE-
CONFIRMATION**

This matter is before the Court on Debtors' Counsel's First Application for Compensation for Services Rendered Pre-Confirmation. Having reviewed the fee application and the Debtors' objections thereto, the Court awards Debtors' Counsel fees and costs in the amount of \$ 708.80, less the retainer already paid of \$500.00 for a total of \$ 208.80.

I. Statement of Facts

On September 23, 2004, Debtors filed a joint voluntary Chapter 13 bankruptcy petition. The petition is the second filed by Debtors. The first petition (case no. 03-46779) was filed on March 10, 2003 and was dismissed on August 31, 2004, post-confirmation, for failure to make plan payments. The present case was dismissed on December 21, 2004, prior to confirmation of a plan.

On January 7, 2005, Debtors' Counsel filed his First Application for Compensation for Services Rendered Pre-Confirmation, seeking total fees of \$1,149.50 and expenses of \$ 93.50. Debtors object to the fees asserting that they are unreasonable and excessive.

II. Jurisdiction

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(a).

III. Standard for Awarding Fees

Bankruptcy Code § 330(a) codifies the criteria for evaluating fee requests. Section 330(a) states, in part:

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 --

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any para-professional personal employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant facts, including

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of

the problem, issue or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for --

(i) unnecessary duplication of services; or

(ii) services that were not --

(I) reasonably likely to benefit the debtor's estate; or

(II) necessary to the administration of the case.

* * *

The Sixth Circuit has adopted a "lodestar method" for actually applying the requirements set forth in 11 U.S.C. § 330. *In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991).

The lodestar method requires that the court first determine a reasonable hourly rate, and then multiply the rate times the reasonable number of hours expended to perform actual, necessary services. The Court may "then determine whether a global reduction or enhancement of the fees is in order." *In re Atwell*, 148 B.R. 483, 492-93 (W.D. Ky. 1993).

The ability to review fee applications in the context of each individual case "permits the Court to balance the following two competing interests: (1) Rewarding the attorney practicing bankruptcy on a level commensurate with other areas of practice; against (2) the need to encourage cost-conscious administration." *Allied Computer Repair, Inc.*, 202 B.R. 877, 884-85 (W.D. Ky. 1996).

Courts have used many factors to analyze the number of hours which constitute a

“reasonable number of hours.” The factors most often included by courts in their analysis are: 1) the nature of the services rendered; 2) the difficulties and complexities encountered; 3) the results achieved; 4) the size of the estate and the burden it can safely bear; 5) the duplication of services; 6) professional standing, ability, and experience of the applicant; 7) fairness to each applicant; and 8) the cost of comparable services other than for a bankruptcy case. *In re General Oil Distributors, Inc.*, 51 B. R. 794 (E.D. N.Y. 1985). The burden of proof is upon the applicant to justify the requested fees. *In re Hamilton Hardware Co., Inc.*, 11 B.R. 326 (Bankr. E.D. Mich. 1981).

Bankruptcy attorneys are not entitled to compensation merely because time recorded was actually expended. *In re Allied Computer Repair, Inc.*, 202 B.R. 877, 886 (Bankr. W.D. Ky. 1996). The purpose of bankruptcy is not to serve as a fund for payment of professional fees. Instead, the purpose is to maximize the estate for distribution to creditors. “Attorneys must be disabused of the erroneous notion that they are entitled to compensation as long as the time recorded was actually expended.” *Allied Computer Repair* 202 B.R. at 886. Every dollar spent on legal fees results in a dollar less that is available to creditors. *Id.* Attorneys should use “billing judgment” and make a good faith effort to “eliminate unproductive time or to reduce hours on productive projects where the total amount billed would be unreasonable in relation to the economic value of the matter in question.” *In re Atwell*, 148 B.R. 483, 490-492 (W.D. Ky. 1993)(billing judgment applicable in determining both the hourly rate and number of billable hours).

In the present case, Debtors’ Counsel requests fees of \$1,149.50. A review of the

file indicates that this is a fairly typical Chapter 13 case, without any unusual issues or complex litigation. In fact, because this was Debtors' second petition, much of the information required to complete the schedules should have been readily available. Given the nature of the case, not all of the fees requested are warranted.

Debtors' Counsel received a fee of \$1,400.00 in the first case, a case which was confirmed and dismissed post-confirmation. Because the time spent preparing and filing Debtors' schedules and plan in the first case was billed and paid in that case, the Court will reduce Counsel's September 27, 2004 entry for preparing schedules and plan in this case by half (from \$340.00 to \$170.00). Further, Debtors in the present case indicated to Counsel, prior to the confirmation hearing, that they wanted the case dismissed. The fees requested by Counsel for December 15, 2004 and December 16, 2004 (in the amount of \$328.50 - preparing for and attending the confirmation hearing) are also denied.

Counsel's fee application requests \$65.00 for time spent preparing the fee application. "Absent exceptional circumstances, fees for the preparation of fee applications should be limited to 5% of the total fees requested." *In re Bass*, 227 B.R. 103, 109 (Bankr. E.D. Mich. 1998). Applying *Bass* to the present fee application, Debtors' Counsel is entitled to no more than \$29.30 ($\$586.00 \times .05$) in fees related to preparing the fee application.

Conclusion

For the foregoing reasons, the Court hereby Grants in Part and Denies in Part Debtors' counsel's First Application For Compensation for Services Rendered Pre-Confirmation. Consistent with this Opinion, the costs and fees requested, \$1,243.00, are

reduced to fees in the amount of \$615.30 and expenses in the amount of \$93.50, for a total of 708.80. Subtracting the \$500.00 retainer already paid, Debtors' Counsel is owed \$208.80.

/s/

Marci B. McIvor
United States Bankruptcy Judge

Dated: April 25, 2005

cc: Robert Stein
Douglas and Susan Hatcher
David Ruskin